

James Q. Taylor-Copeland (284743)
james@taylorcopelandlaw.com
TAYLOR-COPELAND LAW
501 W. Broadway, Suite 800
San Diego, CA 92101
Telephone: (619) 400-4944
Facsimile: (619) 566-4341

Damien J. Marshall (*pro hac vice*)
dmarshall@bsfllp.com
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

Marc M. Seltzer (54534)
mseltzer@susmangodfrey.com
Steven G. Sklaver (237612)
ssklaver@susmangodfrey.com
Oleg Elkhunovich (269238)
oelkhunovich@susmangodfrey.com
Meng Xi (280099)
mxi@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Suzanne E. Nero (SBN 284894)
snero@kslaw.com
KING & SPALDING LLP
101 Second Street, Suite 1000
San Francisco, CA 94105
Tel: (415) 318-1200; Fax: (415) 318-1300

Andrew J. Ceresney (Admitted *pro hac vice*)
aceresney@debevoise.com
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
Tel: (212) 909-6000; Fax: (212) 909-6836

P. Ryan Burningham (*pro hac vice*)
rburningham@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: 206) 516-3883

*Attorneys for Defendants Ripple Labs Inc.,
XRP II LLC, and Bradley Garlinghouse*

Counsel for Lead Plaintiff Bradley Sostack

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re RIPPLE LABS INC. LITIGATION,

This Document Relates To:

ALL ACTIONS

Case No. 18-cv-06753-PJH

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED]
ORDER**

1 Lead Plaintiff Bradley Sostack and Defendants Ripple Labs, Inc., XRP II LLC, and
2 Bradley Garlinghouse submit this Joint Case Management Statement.

3 **1. JURISDICTION & SERVICE**

4 This Court has subject-matter jurisdiction over claims under the Securities Act pursuant to
5 15 U.S.C. § 78aa and 28 U.S.C. § 1331, and supplemental jurisdiction over the entire action under
6 28 U.S.C. § 1367. The parties do not object to venue or dispute personal jurisdiction.

7 This action consolidates three separate complaints originally filed in the Superior Court of
8 the State of California in the County of San Mateo. It was removed to this Court on November 7,
9 2018. (ECF No. 2.) All parties were served on November 8, 2018. (ECF No. 8.) No parties
10 remain to be served.

11 **2. FACTS**

12 **A. Lead Plaintiff's Brief Statement of Facts**

13 In 2013, Ripple created 100 billion cryptocurrency units called XRP. Of those, 20 billion
14 were given to Ripple's founders, and Ripple retained the remainder.

15 Defendants have profited by selling XRP. In 2017 and 2018, Ripple greatly increased its
16 efforts to push XRP on the general public. For example, in 2017, Ripple placed 55 billion XRP
17 in a cryptographically secured escrow account and established 55 contracts of 1 billion XRP each
18 that allow Ripple to sell up to 1 billion XRP per month, with any unsold XRP returned to escrow
19 for use in subsequent offerings. This limited the supply of XRP, increased the demand for XRP,
20 and in turn propped up the value of XRP. Ripple also offered cryptocurrency exchanges
21 significant sums of money and large quantities of XRP in exchange for listing XRP on those
22 exchanges.

23 Expecting to derive profits from owning XRP, Mr. Sostack and others provided money
24 consideration (in the form of USD or other cryptocurrencies) in exchange for XRP. However,
25 Defendants did not register XRP with the SEC or qualify XRP with the California Commissioner
26 of Corporations.

27 Mr. Sostack seeks to represent a class of all investors who purchased Ripple XRP tokens
28 issued and sold by Defendants. Mr. Sostack alleges that XRP is an unregistered security, which

1 Defendants sold in violation of federal and state securities laws. Mr. Sostack also alleges that
 2 Defendants have made false and misleading statements regarding XRP, thereby violating
 3 California's securities laws.

4 **B. Defendants' Response**

5 Defendants categorically deny Plaintiff's claims and dispute the accuracy of his factual
 6 allegations. Defendants deny XRP was or is an unregistered security—XRP is not an “investment
 7 contract” under Section 2(a)(1) of the Securities Act, 15 U.S.C. § 77b(a)(1)—and Defendants
 8 further deny that XRP was required to be registered with the SEC and/or the California
 9 Commissioner of Corporations. Defendants deny that Plaintiff's federal claims are timely and
 10 submit they are barred by the three-year statute of repose set forth in Section 13 of the Securities
 11 Act. Defendants further deny that they are “statutory sellers” under Section 12 of the Securities
 12 Act. Defendants deny that Plaintiff's California securities claims are viable because Plaintiff has
 13 not alleged and cannot show that he was in privity with Defendants when he purchased XRP, as
 14 required by Cal. Corp. Code §§ 25110 and 25503. Defendant Garlinghouse denies that he made
 15 any alleged misrepresentations or omissions of fact concerning the scope and character of his
 16 XRP holdings, that such alleged statements were material, were made with scienter, or that
 17 Plaintiff suffered damages as a result of the same.¹ Defendants will argue that Plaintiff's claim
 18 based on Defendant Garlinghouse's alleged misrepresentation at paragraph 52 of the
 19 Consolidated First Amended Complaint fails as a matter of law. Defendants further deny that this
 20 putative class action should be certified, as the requirements set forth in Rules 23(a) and 23(b)(3)
 21 are not satisfied.

22 **3. LEGAL ISSUES**

23 The primary legal issues in dispute are as follows:

- 24 • Whether XRP are securities within the meaning of Section 2(a)(1) of the
 25 Securities Act, 15 U.S.C. § 77b(a)(1). *See S.E.C. v. W.J. Howey Co.*, 328 U.S.
 26 293, 301 (1946).

27 ¹ This Court dismissed Plaintiff's fraud claims arising out of all other alleged misrepresentations
 28 by Defendants. (ECF No. 115.)

- Whether Plaintiff's Securities Act claims are barred by the three-year statute of repose set forth in Section 13 of the Securities Act's, 15 U.S.C. § 77m.
- Whether Defendants are "statutory sellers" of XRP pursuant to Section 12 of the Securities Act, 15 U.S.C. § 77l, and, if so, whether they are liable only to those who purchased XRP directly from Defendants.
- Whether Plaintiff was in privity with Defendants when he allegedly purchased XRP as required by Cal. Corp. Code §§ 25110 and 25503.
- Whether XRP are securities within the meaning of the California Corporations Code. *See id.*; *Silver Hills Country Club v. Sobieski*, 361 P.2d 906 (Cal. 1961).
- Whether Mr. Garlinghouse's alleged misrepresentation concerning the scope and character of his XRP holdings was false and misleading, and whether it is otherwise actionable. *See* Cal. Corp. Code § 25401.
- Whether Plaintiff's alleged putative class can be certified under Fed. R. Civ. P. 23(a) and 23(b)(3).
- Whether *Morrison* and its progeny limit Plaintiff's class to purchases on domestic exchanges that qualify as "domestic transactions." *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 268 (2010).
- Whether individualized *Morrison* inquiries defeat the predominance of common questions required to certify a class under Fed. R. Civ. P. 23(b)(3). *See Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 268 (2010).
- Whether Plaintiff can pursue a nationwide class on behalf of their California Securities Law Claims, Cal. Corp. Code §§ 25110 and 25503.

4. MOTIONS

On February 26, 2020, this Court granted in part and denied in part Defendants' motion to dismiss. (ECF No. 85.) That order granted Lead Plaintiff leave to amend, and he filed a Consolidated First Amended Complaint on March 25, 2020. (ECF No. 87.) Defendants filed a motion to dismiss the Consolidated First Amended Complaint (ECF No. 102), which the Court granted in part and denied in part (ECF No. 115). Defendants answered the Consolidated First Amended Complaint on October 16, 2020. (ECF No. 117.) Defendants anticipate moving for summary judgment. There are no motions pending now.

5. AMENDMENT OF PLEADINGS

Lead Plaintiff filed a Consolidated First Amended Complaint on March 25, 2020. Presently, he does not expect to add or dismiss parties or claims.

1 **6. EVIDENCE PRESERVATION**

2 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
3 Stored Information and have met and conferred during the parties' Rule 26(f) conference
4 regarding reasonable and proportionate steps to preserve evidence relevant to the issues
5 reasonably evident in this action.

6 **7. DISCLOSURES**

7 The parties served their respective initial disclosures on November 3, 2020.

8 The parties have agreed that Fed. R. Civ. P. 37(c)(1) sanctions will not be sought and
9 should not be imposed if initial disclosures are supplemented in a timely fashion under Fed. R.
10 Civ. P. 26(e).

11 **8. DISCOVERY**

12 **A. Discovery Taken to Date**

13 On October 8, 2020, Lead Plaintiff served his first set of requests for production.

14 **B. Scope and Phasing of Anticipated Discovery**

15 **1. Plaintiff's Position**

16 Lead Plaintiff intends to conduct discovery concerning Defendants' creation, promotion,
17 and sales of XRP, and Defendants' communications concerning the same. Lead Plaintiff also
18 intends to conduct discovery concerning damages.

19 Lead Plaintiff served his first requests for production of documents on October 8, 2020,
20 and granted Defendants' request for an extension to respond to those requests by December 9,
21 2020. The Parties have agreed that relevant, non-privileged documents and communications that
22 Defendants previously provided to or received from the SEC will be produced by December 16,
23 2020 and a privilege log of any withheld documents will be provided by December 23, 2020.
24 Producing these documents promptly will avoid unnecessary delay in this action and will very
25 likely assist the parties in tailoring future discovery efforts and resolving any disputes concerning
26 the scope of Lead Plaintiff's first requests for production.

27 **2. Defendants' Position**

28 Defendants are in the process of preparing objections and responses to the 97 separate

1 Requests for Production Plaintiff served on October 8. Defendants are in the process of
 2 reviewing documents for production and will begin a rolling production of documents by
 3 December 16, 2020. Defendants anticipate discovery disputes might arise over the overbreadth
 4 and disproportionality of many of Plaintiff's discovery requests but will meet and confer with
 5 Plaintiff's counsel to attempt to resolve these disputes.

6 Defendants intend to conduct discovery concerning Plaintiff's alleged purchases of XRP
 7 and other cryptocurrencies, including the information he relied on, if any, in making those alleged
 8 purchases, and whether he was damaged as a result of the alleged purchases. Defendants will
 9 seek discovery regarding whether XRP is an investment contract. Defendants may also seek
 10 discovery on the issue of when XRP was bona fide offered to the public and Ripple's sales of
 11 XRP. In addition, Defendants will seek discovery into whether Plaintiff can satisfy the
 12 requirements of Rule 23.

13 **C. Protective Order**

14 The parties have filed a stipulated Protective Order. (ECF No. 98.)

15 **D. Proposed Limitations or Modifications to Discovery Rules**

16 *Depositions.* Plaintiff's position is that relief is needed from the limitation on the number
 17 of depositions set forth in Rule 30(a)(2). Defendants' position is that Rule 30(a)(2) should
 18 control.

19 *Document Subpoenas to Non-Parties.* The parties agree as follows with respect to
 20 nonparties producing materials in response to Fed. R. Civ. P. 45 document subpoenas in this
 21 action. The issuing party shall request that non-parties simultaneously produce materials to both
 22 Lead Plaintiff and Defendants. If, notwithstanding such request, the non-party does not produce
 23 the materials to both sides, the issuing party shall provide a copy of all materials to the other side
 24 within three business days after receipt of the materials from the non-party, subject to any
 25 limitations in the Protective Order. If a party modifies or extends the time to respond to a Fed. R.
 26 Civ. P. 45 document subpoena (whether orally or in writing), it shall simultaneously notify the
 27 other party of that extension, modification, or explanation, including providing copies of any
 28 written agreements regarding modification or extension.

1 *Authenticity Presumptions.* Documents produced by Plaintiff and Defendants in this
 2 action shall be presumed to be authentic within the meaning of Fed. R. Evid. 901. If a party
 3 serves a specific good-faith written objection to the authenticity of a document that it did not
 4 produce from its files, the presumption of authenticity will no longer apply to that document.
 5 Any objection to a document's authenticity must be provided with (or prior to) the exchange of
 6 objections to trial exhibits. The parties will promptly meet and confer to attempt to resolve any
 7 objections. The Court will resolve any objections that are not resolved through this means or
 8 through the discovery process.

9 *Service.* Service of any documents not filed via ECF, including pleadings, discovery
 10 requests, subpoenas for testimony or documents, expert disclosure, and delivery of all
 11 correspondence, whether under seal or otherwise, shall be by email to all attorneys of record for
 12 the receiving party; the parties will provide each with "service lists" that can be used to serve
 13 documents. In the event the volume of served materials is too large for email and requires
 14 electronic data transfer by file transfer protocol or a similar technology, or overnight delivery, the
 15 serving party will telephone or email the other side's principal designee when the materials are
 16 sent to provide notice that the materials are being served. For purposes of calculating discovery
 17 response times under the Federal Rules of Civil Procedure, electronic delivery shall be treated the
 18 same as hand delivery.

19 **E. Stipulated E-Discovery Order**

20 On file at ECF No. 99-1 is the parties' stipulated order governing ESI discovery. On
 21 November 4, 2020, the Court entered that stipulated order as modified by the Court. ECF No.
 22 121.

23 **F. Proposed Discovery Plan**

24 The parties' proposals concerning discovery timing are set forth in Section 17 (Proposed
 25 Case Schedule) below.

26 **G. Current Discovery Disputes**

27 There are no discovery disputes at this time.
 28

1 **9. CLASS ACTIONS**

2 Lead Plaintiff proposes that a class be certified pursuant to Fed. R. Civ. P. 23(a) and
3 23(b)(3). Lead Plaintiff proposes to file a motion for class certification as set forth in his
4 proposed schedule below. Defendants deny that this lawsuit should proceed as a class action and
5 will oppose any motion for class certification.

6 **10. RELATED CASES**

7 This consolidated action includes *Greenwald v. Ripple et al.*, 18-490; *Zakinov v. Ripple et*
8 *al.*, 18-CIV-2845 (Cal. Super. Ct. San Mateo Cty.); and *Oconer v. Ripple Labs, Inc.*, 18-CIV-
9 3332 (Cal. Super. Ct. San Mateo Cty.). Additionally, *Bitcoin Manipulation Abatement LLC v.*
10 *Ripple Labs, Inc., et al.*, 20-cv-3022, was filed in this District on May 1, 2020 (the “BMA
11 Lawsuit”). On May 28, 2020, this Court granted the parties’ joint motion (ECF No. 96) and
12 ordered the BMA Lawsuit related and consolidated to this action (ECF No. 101). Finally,
13 *Simmons v. Ripple Labs, Inc.*, No. 20-cv-5127-KAW (the “Simmons” Lawsuit), was transferred to
14 this District on July 27, 2020, and on August 21, 2020, this Court entered a stipulated order
15 consolidating the Simmons Lawsuit to this action. (ECF No. 113.)

16 **11. RELIEF**

17 Lead Plaintiff, on behalf of himself and all others similarly situated, seeks damages to the
18 maximum extent authorized by applicable federal and state law. He also seeks injunctive, other
19 equitable relief as the Court may deem just and proper, and costs and fees.

20 Defendants deny that Plaintiff is entitled to any of the relief sought and reserve the right to
21 seek attorney’s fees and costs if and where allowed. Based on presently known information,
22 Defendants do not anticipate filing a counterclaim in this action.

23 **12. SETTLEMENT AND ADR**

24 The parties had previously scheduled mediation for October 6, 2020. However, mediation
25 was subsequently cancelled.

26 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

27 The parties do not consent to a magistrate judge conducting all further proceedings in this
28 case.

14. OTHER REFERENCES

The parties do not believe this case is suitable for reference to binding arbitration or a special master.

15. NARROWING OF ISSUES

The parties will consider issues that can be narrowed by agreement or by motion, as well as potential means to expedite the presentation of evidence at trial.

16. EXPEDITED TRIAL PROCEDURE

The parties agree that this case is not suitable for handling under the Expedited Trial Procedure of General Order No. 64.

17. PROPOSED CASE SCHEDULE

The parties have agreed upon the following proposed case schedule:

Event	Proposal Deadline
Initial Disclosures	Tuesday, November 3, 2020
Initial Case Management Conference	Thursday, November 12, 2020
Close of Fact Discovery	Friday, April 15, 2022
Plaintiffs' Opening Expert Reports	Friday, May 13, 2022
Defendants' Expert Reports	Friday, June 10, 2022
Plaintiffs' Rebuttal Expert Reports	Friday, July 8, 2022
Close of Expert Discovery	Friday, July 29, 2022
Plaintiffs' Motion for Class Certification	Friday, August 26, 2022
Defendants' Opposition to Motion for Class Certification	Friday, September 23, 2022
Plaintiffs' Reply in Support of Motion for Class Certification	Friday, October 21, 2022
Hearing on Motion for Class Certification	TBD (the Court's schedule indicates all motions will

	be decided on the papers until further notice)
Last Day to File Dispositive Motions and <i>Daubert</i> Motions	Friday, December 16, 2022
Summary Judgment and <i>Daubert</i> Oppositions	Friday, January 27, 2023
Summary Judgment and <i>Daubert</i> Replies	Friday, February 17, 2023
Hearing on Dispositive Motions	TBD (the Court's schedule indicates all motions will be decided on the papers until further notice)
Final Pretrial Conference	Friday, March 17, 2023
Trial	Monday, April 10, 2023

18. TRIAL

This case will be decided by a jury trial. Lead Plaintiff currently estimates the trial in this case to last 10-14 days. Defendants believe it is premature to discuss the expected length of a trial at this early stage in the proceedings, but based on currently available information, agree with Lead Plaintiff's estimate.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-15, Lead Plaintiff and Defendants filed Certifications of Interested Entities or Persons. (ECF Nos. 1, 48).

20. PROFESSIONAL CONDUCT

All attorneys of record have reviewed the Guidelines for Professional Conduct for the Northern District of California.

Dated: November 5, 2020

By: /s/ Oleg Elkhunovich

Oleg Elkhunovich
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, 14th Floor
Los Angeles, CA 90067

By: /s/ Damien J. Marshall

Damien J. Marshall
BOIES SCHILLER FLEXNER L.L.P.
55 Hudson Yards, 20th Floor
New York, NY 10001

1 OElkhunovich@susmangodfrey.com
2 *Counsel for Plaintiff*

DMarshall@bsflp.com
Counsel for Defendants

3 **ATTESTATION**

4 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the
5 filing of this document has been obtained from the other signatories.

6 DATED: November 5, 2020

7 /s/Oleg Elkhunovich
8 Oleg Elkhunovich

9 Pursuant to the foregoing stipulation, **IT IS SO ORDERED.**

10
11 Dated:

12 _____
13 The Honorable Phyllis J. Hamilton
14 UNITED STATES DISTRICT JUDGE
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